

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

and

SIERRA CLUB,

Intervenor-Plaintiff,

v.

DTE ENERGY COMPANY AND  
DETROIT EDISON COMPANY,

Defendants.

Civil Action No.  
2:10-cv-13101-BAF-RSW

Judge Bernard A. Friedman

Magistrate Judge R. Steven  
Whalen

**JOINT MOTION AND BRIEF FOR FURTHER STAY PENDING  
SETTLEMENT NEGOTIATIONS,  
AND STATUS REPORT ON NEGOTIATIONS**

Pursuant to Local Rule 7.1(a), the Parties jointly move for a one-month stay of this case while they continue to engage in settlement negotiations seeking to resolve this case in its entirety. All Parties—Plaintiff United States of America (“United States”), Defendants DTE Energy Company and Detroit Edison Company (collectively, “DTE”), and Plaintiff-Intervenor Sierra Club—join in this motion.

This joint filing also serves as the Parties’ status report on negotiations, as required by the Court’s order granting the current stay [ECF No. 244].

In further support of this motion, the Parties state the following:

1. This litigation began in 2010 when the United States filed its complaint and motion for preliminary injunction. On November 23, 2010, Sierra Club's motion to intervene as a plaintiff in this proceeding was granted. The litigation has been to the United States Court of Appeals for the Sixth Circuit twice. The Court granted summary judgment for a second time to DTE on the claim in the original complaint on March 3, 2014 [ECF No. 196], and Plaintiffs again appealed to the Sixth Circuit (ECF Nos. 221, 222). By judgment dated January 10, 2017, the Sixth Circuit reversed and remanded in a 2-1 decision with three separate opinions. [Case nos. 14-2274, 14-2275, Doc. 40-2]. DTE timely filed a petition for certiorari to the United States Supreme Court, which was denied by order dated December 11, 2017 [*see* ECF No. 235]. The Sixth Circuit's mandate was issued on December 14, 2017, and was received by the clerk of this Court on the same day [ECF No. 236].

2. On December 13, 2018, the Court granted the Parties' joint motion to continue the stay of the litigation to pursue settlement negotiations for an additional six months through May 14, 2019 [ECF No. 244]. Since that time, the Parties have made significant progress in settlement discussions. The Parties have greatly reduced the number of outstanding issues on which substantial disagreements remain, and they are continuing to convene in an attempt to make further progress. A one-month extension of the current stay will allow them to

continue their discussions on the outstanding items and to determine whether further discussions would be fruitful. If the Parties agree that further discussions would be fruitful to resolve all the claims before the Court, they anticipate seeking a further extension.

3. The Parties believe that the continuing expense and uncertainty of this expansive litigation favors exploring whether a resolution by agreement can be reached before the parties re-engage in full-blown discovery and trial preparation on multiple, complex claims. Both judicial efficiency and conservation of the Parties' resources favor a further stay while they pursue these settlement negotiations.

4. Therefore, the Parties respectfully request that the Court extend the stay of this litigation through June 14, 2019. The Parties propose that at that time they would provide the Court a status report on negotiations and a recommendation for next steps.

### **BRIEF IN SUPPORT OF MOTION**

For their Brief in Support of their Joint Motion for Stay Pending Settlement Negotiations, the Parties rely upon the reasons and authority set forth in the Motion.

Respectfully submitted, this the 8th day of May 2019.

Bruce S. Gelber  
Deputy Assistant Attorney General  
Environment & Natural Resources  
Division

/s/ Thomas A. Benson

Thomas Benson  
thomas.benson@usdoj.gov  
Kristin M. Furrie  
kristin.furrie@usdoj.gov  
U.S. Department of Justice  
Environmental and Natural Resource  
Div.  
Ben Franklin Station  
P.O. Box 7611  
Washington, DC 20044  
202-514-5261

Peter Caplan  
U.S. Attorney's Office  
211 W. Fort Street  
Suite 2001  
Detroit, MI 48226  
*Counsel for Plaintiff United  
States*

/s/ Shannon Fisk

Shannon Fisk  
Managing Attorney, Coal  
Program  
Earthjustice  
1617 John F. Kennedy Blvd.,  
Suite 1130  
Philadelphia, PA 19103  
T: 215-717-4522  
C: 215-327-9922  
earthjustice.org  
*Counsel for Plaintiff-Intervenor  
Sierra Club*

/s/ Harry M. Johnson, III

F. William Brownell  
brownell@hunton.com  
Harry M. Johnson, III  
pjohnson@hunton.com  
Makram B. Jaber  
mjaber@hunton.com  
Hunton & Williams LLP  
1900 K Street, N.W.  
Washington, D.C. 20006-1109  
(202) 955-1500

Brent A. Rosser  
Hunton & Williams LLP  
101 South Tryon Street  
Suite 3500  
Charlotte, North Carolina 28211  
brosser@hunton.com  
(704) 378-4707

Matthew J. Lund (P48632)  
Pepper Hamilton LLP  
4000 Town Center, Suite 1800  
Southfield, Michigan 48075  
lundm@pepperlaw.com  
(248) 359-7370

Michael J. Solo (P57092)  
Andrea E. Hayden  
DTE Energy  
One Energy Plaza  
Detroit, Michigan  
solom@dteenergy.com  
haydena@dteenergy.com  
(313) 235-9512  
*Counsel for Defendants*